

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JAY WALLER,

Plaintiff,

v.

MICHAEL BURGESS, et al.,

Defendants.

Case No. 1:22-cv-958

HON. JANE M. BECKERING

**MEMORANDUM OPINION AND ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The only Defendant remaining in the case is Unknown Party #1. On March 4, 2024, the Magistrate Judge issued a Report and Recommendation (R&R), recommending that this Court dismiss Plaintiff's claims against Unknown Party #1 without prejudice and enter a final judgment in favor of Defendants. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Memorandum Opinion and Order.

In recommending that this Court dismiss Plaintiff's claims against Unknown Party #1, the Magistrate Judge observed that Plaintiff had "done nothing since filing this action to identify the individual, and discovery is now closed" (R&R, ECF No. 37 at PageID.173). The Magistrate Judge further observed that in "the more than four months since the Case Management Order was entered (ECF No. 25), Plaintiff did not request an extension of time to effect service on Unknown

Party #1, he did not request the Court's assistance in identifying this individual, and he apparently did not serve discovery requests seeking this individual's identity" (*id.* at PageID.174).

In his objections (ECF No. 42), Plaintiff does not identify—let alone demonstrate—any factual or legal error by the Magistrate Judge. Rather, Plaintiff argues that the Court is mistaken that he failed to properly exhaust his administrative remedies, and suggests, without explanation or evidence, that this Court is not receiving his mail (*id.* at PageID.183–84). Plaintiff's arguments are not relevant to the instant Report and Recommendation but instead are arguments he made in his earlier motion (ECF No. 33) for reconsideration of this Court's January 16, 2024 Order (ECF No. 29) approving and adopting a different Report and Recommendation by the Magistrate Judge. The Court denied Plaintiff's motion for reconsideration in a February 20, 2024 Memorandum Opinion and Order (ECF No. 36). Plaintiff's objections are therefore properly denied.

Accordingly, this Court will adopt the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this Memorandum Opinion and Order resolves the remaining pending claims, a Judgment will also be entered. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211–12 (2007). Therefore:

**IT IS HEREBY ORDERED** that the Objections (ECF No. 42) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 37) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Plaintiff's complaint against Defendant Unknown Party #1 is DISMISSED WITHOUT PREJUDICE.

**IT IS FURTHER ORDERED** that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: June 13, 2024

/s/ Jane M. Beckering  
JANE M. BECKERING  
United States District Judge